



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: FEBRUARY 10, 2023

IN THE MATTER OF:

Appeal Board No. 627335 A

PRESENT: JUNE F. O'NEILL, MEMBER

The employer applied to the Appeal Board pursuant to Labor Law § 534 for a

reopening and reconsideration of Appeal Board No. 624988, filed November 29, 2022, which reversed the decision of the Administrative Law Judge and overruled the initial determination disqualifying the claimant from receiving benefits, effective December 24, 2021, on the basis that the claimant voluntarily separated from employment without good cause.

Upon due deliberation on the application, the Board has reopened and reconsidered its decision.

Our review of the record reveals that the case should be remanded to hold a hearing. After the claimant requested a hearing and the hearing was scheduled, the employer submitted a written request for an adjournment on the basis that the employer's key witness would not be available to testify on the day of the hearing because he was scheduled to be on vacation. Despite having good cause for its failure to appear at the hearing, the employer has not yet had an opportunity to be heard in this matter. Therefore, a further hearing should be held to afford the employer another opportunity to appear. At the hearing, the Judge shall offer the employer an opportunity to cross-examine the claimant regarding her testimony at the prior hearing, comment on the exhibits already in evidence, and present new evidence and witnesses. The Judge shall take such further testimony and evidence as may be necessary to complete the record.

Now, based on all of the foregoing, it is

ORDERED, that the decision of the Appeal Board be, and the same hereby is, rescinded; and it is further

ORDERED, that the decision of the Administrative Law Judge be, and the same hereby is, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issue of voluntary separation from employment without good cause, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, on all the issues including those contained in Appeal Board Case No. 624988, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

JUNE F. O'NEILL, MEMBER